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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

LEONARDO PIMENTEL SANCHEZ,

Defendant and Appellant.

G055222

(Super. Ct. No. 00SF0657)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gregg L. Prickett, Judge. Affirmed and remanded with directions.

Christine Vento, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal and Collette C. Cavalier, Deputy Attorneys General, for Plaintiff and Respondent.

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INTRODUCTION

Defendant Leonardo Pimentel Sanchez appeals from the judgment of conviction entered after a jury found him guilty of the first degree murder of Cari Ann Parnes. We have considered and reject each of Sanchez's contentions that the trial court made prejudicially erroneous evidentiary rulings and that insufficient evidence supported his conviction. During the pendency of this appeal, Senate Bill No. 1393 (Stats. 2018, ch. 1013) (S.B. 1393) became effective, thereby amending Penal Code sections 667, subdivision (a) and 1385, subdivision (b) to vest in the trial court discretion to strike the five-year prior serious felony conviction enhancement under Penal Code section 667, subdivision (a)(1). Sanchez and the Attorney General agree this statutory change applies to Sanchez as this case is not yet final. We therefore affirm the judgment of conviction but remand with directions for the trial court to hold a resentencing hearing with the limited purpose of exercising its discretion whether to strike Sanchez's prior serious felony convictions and thereafter issue an amended abstract of judgment.

FACTS¹

In 1992, Alan Reynolds was the manager of orchard operations for a farm and was responsible for 6,000 acres of land in an area that is now part of the City of Irvine. On March 26, 1992, Reynolds and his boss inspected the orange tree orchards to determine how the trees fared after the preceding four days of significant rainfall; it had been over a week since those orchards were inspected because of the rain. While they were driving between rows of orange trees, Reynolds's boss told him to stop the vehicle

¹ We view the evidence in the light most favorable to the jury's verdict and resolve all conflicts in its favor. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206; *People v. Barnes* (1986) 42 Cal.3d 284, 303.) Our summary of facts is based on evidence presented at trial and is limited to those facts relevant to the issues on appeal.

and pointed out to Reynolds what appeared to be a partially clothed body in the orchard. They immediately contacted the police.

Deputy Sheriff Lynn Koehmstedt was dispatched to the orchard at a location on Jeffrey Road, between Bryan Avenue and Trabuco Road. From that location, Koehmstedt was directed to a dirt road in the middle of the orchard to access the body lying in between trees.

Criminalist Elizabeth Thompson Lloyd was also called out to the crime scene. She observed what appeared to be evidence of blunt force trauma to the upper left temple area of the victim's head and some bruising and discoloration on the neck and left shoulder area. Lloyd did not observe defensive wounds or any trauma to the victim's vaginal area or anal area; none of the victim's clothing was ripped. The victim was wearing light blue loose fitting pants. Her shirt was up around her breasts in a manner consistent with her having been dragged by the feet. Lloyd observed clumps of hair about five feet from the victim's head; Lloyd testified it was possible the victim lost the hair when she was hit or when she was dragged. A car antenna was found under the victim's left arm.

It started raining very hard about five minutes after Lloyd arrived, hindering her ability to investigate because rain washes away evidence including DNA, footprints, and tire tracks. Lloyd did not observe footprints or tire tracks near the body; she testified such evidence could have been washed away by the previous rain. Lloyd testified the victim had been placed in the orange grove more than 24 hours before Lloyd arrived at the scene but she could not determine whether the murder occurred at the grove.

The following day, forensic pathologist Dr. Aruna Singhanian performed an autopsy on the victim. Singhanian testified the victim suffered three separate lacerations, each of which was debilitating in that each would have rendered the victim unconscious or at least unable to stand upon the impact which inflicted injury. One of the lacerations

fractured the skull; all of the injuries were on the left side of the body, mostly to the head and neck. The victim had also suffered a fractured jaw from blunt force trauma. Although the victim had cocaine in her system, the victim's death was caused by contusion and laceration of the brain, including a skull fracture, due to blunt force trauma. Singhanian detected scalloping on the edges of the victim's lacerations which suggested an object with sharp edges had been used to kill the victim. The victim had been dead at least 36 to 48 hours before the autopsy, given the absence of any sign of rigor mortis. Singhanian testified the extent of skin slippage, the presence of multi-generational maggots on the body, and the degree the brain had liquefied were consistent with the victim having been deceased for seven to 10 days.

One year later, the victim was identified as Parnes; she was 19 years old when she was killed. On May 17, 1993, forensic scientist Mary Hong analyzed vaginal and anal swabs that had been collected from Parnes's body to screen for the presence of semen. Hong observed the presence of intact sperm from the vaginal swab. Further testing of the sample identified a single source DNA profile for the detected sperm. That DNA profile was submitted to the Combined DNA Index System maintained by the California Department of Justice. It was determined the DNA profile matched the standard DNA profile detected in a sample taken from Sanchez. Hong testified that the DNA profile obtained from the vaginal swab sample would be expected to be found in fewer than one in one trillion unrelated individuals.

Almost eight years earlier, Sanchez had pleaded guilty to having committed two counts of rape and one count of penetration by a foreign object, stating the following as the factual basis for his plea: "On 5-19-84 in Orange County, I forcibly raped Irene T[.] by forcing her to engage in sexual intercourse with me against her will; [o]n the same date in Orange County, I inserted my finger into Irene T[.]'s vagina against her will by means of force; [l]ater on that same date I again forced Irene [T.] to have sexual intercourse with me by means of force and fear against her will. During both acts of

sexual intercourse, I seriously injured the victim. I intentionally inflicted great bodily injury on the victim in the course of the crimes mentioned.” Sanchez was sentenced to an eight-year prison term; he was released from prison on June 29, 1989.

Over Sanchez’s objection, Irene T. testified at the trial (over the murder of Parnes) about Sanchez’s crimes against her. In May 1984, Irene was waiting outside her Garden Grove apartment building when a neighbor introduced her to the neighbor’s cousin, later identified as Sanchez. Irene and Sanchez got into Sanchez’s car to go and buy hamburgers and soda at the corner store. Instead of stopping at that store, Sanchez drove onto the freeway and to a small shop that seemed to Irene to be far away; he bought a six-pack of beer and a coke. Sanchez then drove them to the same orange grove near Jeffrey Road and Bryan Avenue where Parnes’s body was found in 1992 and then drove inside the orange grove where he parked the car. Sanchez drank beer for a couple of minutes and then became violent.

Sanchez hit Irene in the face and then raped her in the front seat of the car. She tried to escape by getting out of the car and running away but Sanchez caught up to her, pulled her hair, put his arm around her neck and brought her back to the car where he raped her again. After the second rape, he pulled her out of the car by the arm; they were in between orange trees as he hit her in the face causing her to bleed significantly. A helicopter hovered above and Irene yelled hoping she would be seen; the more she yelled, “the more he was hitting [her] on the face.”

He pulled her to another location in the area. Irene was able to run away to a nearby house and get help; Sanchez did not follow.

The defense presented evidence showing that before her death, Parnes had a dangerous lifestyle that included drug abuse, prostitution, and affiliations with individuals involved in criminal activities.

PROCEDURAL HISTORY

Sanchez was charged in an information with one count of murder in violation of Penal Code section 187, subdivision (a). The information alleged the special circumstance that Sanchez committed the murder during the commission of rape and further alleged he had suffered two prior serious felony convictions. The jury found Sanchez guilty as charged but found the rape special circumstance allegation not true. The trial court summarily denied the motion for new trial.

The trial court found true the allegations Sanchez had suffered two prior serious felony convictions and sentenced Sanchez to 25 years to life in prison, plus a determinate term of 10 years. Sanchez appealed.

DISCUSSION

I.

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY ADMITTING EVIDENCE OF SANCHEZ'S PRIOR SEXUAL OFFENSES UNDER EVIDENCE CODE SECTION 1108.

Sanchez argues that the trial court erred by admitting evidence of Sanchez's prior sexual offenses because the evidence did not meet the standards of Evidence Code sections 1108 and 1101 and the evidence was otherwise inadmissible because its probative impact was substantially outweighed by its prejudicial impact within the meaning of Evidence Code section 352. (All further statutory references are to the Evidence Code unless otherwise specified.) He argues the trial court's evidentiary error violated his rights to due process and a fair trial and thus cannot be harmless. He further argues the trial court should have granted his motion for a new trial (that would have excluded such evidence) given the jury returned a finding that the rape special circumstance allegation was not true. Sanchez's arguments lack merit.

A.

The Trial Court Did Not Abuse Its Discretion by Admitting the Evidence of Sanchez's Prior Sexual Offenses Against Irene T.

In *People v. Erskine* (May 23, 2019, S127621) __ Cal.5th __ [2019 Cal. Lexis 3506] (*Erskine*), the California Supreme Court restated the general principles governing the interplay of sections 1101, 1108, and 352 in determining the admissibility of evidence of prior sexual offenses as follows: “‘Evidence Code section 1101, subdivision (a) sets forth the “‘strongly entrenched” rule that propensity evidence is not admissible to prove a defendant’s conduct on a specific occasion.’ [Citation.] ‘At the same time, “other crimes” evidence is admissible under Evidence Code section 1101, subdivision (b) “when offered as evidence of a defendant’s motive, common scheme or plan, preparation, intent, knowledge, identity, or absence of mistake or accident in the charged crimes.”’ [Citation.] ‘In this inquiry, the degree of similarity of criminal acts is often a key factor, and “there exists a continuum concerning the degree of similarity required for cross-admissibility, depending upon the purpose for which introduction of the evidence is sought: ‘The least degree of similarity . . . is required in order to prove intent’ . . . By contrast, a higher degree of similarity is required to prove common design or plan, and the highest degree of similarity is required to prove identity.”’

“Section 1108 ‘carves out an exception to section 1101.’ [Citation.] Section 1108, subdivision (a) provides that ‘[i]n a criminal action in which the defendant is accused of a sexual offense, evidence of the defendant’s commission of another sexual offense or offenses is not made inadmissible by Section 1101, if the evidence is not inadmissible pursuant to Section 352.’” (*Erskine, supra*, __ Cal.5th at p. __ [2019 Cal. Lexis 3506, at pp. *29-30].)

Here, Sanchez was accused of committing a sexual offense within the meaning of section 1108 because the information contained the special circumstance allegation he murdered Parnes during the commission of rape in violation of Penal Code

section 261. (See *People v. Merriman* (2014) 60 Cal.4th 1, 40 (*Merriman*) [“Defendant was ‘accused of a sexual offense’ within the meaning of Evidence Code section 1108 because it was alleged he murdered Katrina during the commission of rape and forcible oral copulation (Pen. Code, §§ 261, 288a), both of which are ‘sexual offenses’ as defined by Evidence Code section 1108, subdivision (d)(1)”]; see also *Erskine, supra*, __ Cal.5th __ [2019 Cal. Lexis 3506, at pp. *30-31] [“Erskine was accused of a sexual offense; under section 1108, evidence of the other two crimes was therefore not inadmissible under section 1101 to show Erskine’s propensity to commit the sexual offenses upon which the murder charge and the special circumstance allegations were based, so long as the evidence was not inadmissible under section 352”].) We therefore next determine whether the trial court abused its discretion by finding that evidence admissible under section 352.

Section 352 provides that “[t]he court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.” It therefore “follows that if evidence satisfies the requirements of section 1108, including that it is not inadmissible under section 352, then the admission of that evidence does not violate section 1101.” (*People v. Daveggio and Michaud* (2018) 4 Cal.5th 790, 823.) We review the trial court’s ruling admitting evidence under these provisions for an abuse of discretion. (*Id.* at p. 824.)

In determining the admissibility under section 352 of evidence of past sexual offenses offered under section 1108, the court must “undertake[] a careful and specialized inquiry to determine whether the danger of undue prejudice from the propensity evidence substantially outweighs its probative value.” (*Merriman, supra*, 60 Cal.4th at p. 41.) Factors to be considered by the court include the “‘nature, relevance, and possible remoteness [of the evidence], the degree of certainty of its

commission and the likelihood of confusing, misleading, or distracting the jurors from their main inquiry, its similarity to the charged offense, its likely prejudicial impact on the jurors, the burden on the defendant in defending against the uncharged offense, and the availability of less prejudicial alternatives to its outright admission, such as admitting some but not all of the defendant's other sex offenses.'" (*Ibid.*)

Evidence that in 1984, Sanchez brought Irene T. to an Irvine orchard where he violently raped Irene and dragged her among the trees before she was able to yell to a hovering helicopter and escape was highly probative of whether Sanchez brought Parnes to the same orchard in 1992 and killed her while committing sexual offenses against her. The past sexual offenses and the charged offenses bear similarity in the commonality of their venue and the blows inflicted to the victims' heads, respectively.

Although Sanchez's prior crimes against Irene occurred eight years before Parnes's murder, the significance of the temporal remoteness of the prior sexual offenses is lessened. Sanchez spent four and a half years in prison for the offenses against Irene and had been out of custody for less than three years before Parnes's murder. Because Sanchez had pleaded guilty to two counts of committing rape and one count of penetration by a foreign object against Irene, the degree of certainty he committed the prior sexual offenses was not in question. The jurors were also informed that Sanchez had been convicted of and imprisoned for the prior sexual offenses, lessening the risk the jurors would be tempted to punish him in the instant case for the prior offenses. Furthermore, the past sexual offenses evidence did not present the likelihood of confusing, misleading, or distracting the jurors from their main inquiry.

The trial court therefore did not abuse its discretion by concluding the probative value of the past sexual offenses evidence was not substantially outweighed by the risk the admission of such evidence would necessitate an undue consumption of time or create a substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.

In his opening appellate brief, Sanchez argues the trial court's failure to provide a more detailed analysis of its ruling admitting the prior sexual offenses evidence showed the trial court failed to conduct the necessary analysis under Evidence Code section 352 before admitting evidence of the prior sexual offenses under section 1108, resulting in a violation of Sanchez's rights to due process and a fair trial.

Before trial, the prosecutor filed a motion in limine seeking the admission of evidence of Sanchez's prior sexual offenses against Irene under sections 1108, 1101, and 352. Following argument on the motion, the trial court stated, "I'm going to make a formal ruling at a later date, but my tentative ruling is to grant the People's evidence. I wish to write out all of my thoughts on the various steps that I need to do, but that's my tentative ruling at this time." The court stated it was admitting the evidence under section 1108, and reserving the issue whether to admit under section 1101. The court further stated, "If counsel wants me to make a pretrial ruling on 1101(b), I am willing to do that. I was not asked by the People to do that. I know that you raised it in your brief, but the People's [brief] was almost entirely focused on section 1108. So that's where my focus was too." Defense counsel stated: "Just to be clear, my objection would include 1101." The court responded, "And noted." The court did not issue a formal ruling regarding the admission of section 1108 evidence and the record does not show any party asked the court to do so.

Sanchez does not cite to any portion of the record which he contends shows the trial court failed to engage in the proper analysis under section 352 or that the court had any misapprehension about the nature of its discretion in determining the admissibility of the section 1108 evidence. Although the court did not engage in an on-the-record weighing process or prepare the formal statement of reasons for admitting the section 1108 evidence it stated it would provide, it was not required to do so. A trial court is presumed to follow the law. It is reasonable to conclude that the court satisfied its obligation to ensure that only relevant and admissible evidence would be presented to

the jury. The trial court is not obliged to expressly weigh the probative and prejudicial aspects of the proffered evidence, nor is it required to state that it has done so. (*People v. Lucas* (1995) 12 Cal.4th 415, 448; *People v. Mickey* (1991) 54 Cal.3d 612, 656.)

There is nothing in the record to indicate that the experienced trial judge misunderstood its responsibilities under section 352. Indeed, as pointed out in the respondent's brief, the trial court demonstrated its awareness and understanding of its obligation under section 352 when defense counsel sought to have evidence regarding the location where the prior sexual offenses occurred excluded from trial based on section 352. The trial court stated "I don't view that it's overly prejudicial time-consuming or the like. The location is benign from the standpoint of there's nothing extraordinarily gruesome, the classic 352 prejudice that is spoken of there." The court continued, "it's not the type of evidence that would invoke an emotional bias against a party as an individual, while having only slight probative value with regard to the issues. *People v. Sheid* [(1997)] 16 Cal.4th [1, 19], that's what I'm looking at as it relates to that." In *People v. Sheid*, the Supreme Court analyzed the admissibility of evidence under section 352. Here, the trial court's statements on the record regarding section 352 "demonstrate[] that [it] 'understood and fulfilled its responsibilities under Evidence Code section 352. Nothing more was required.'" (*People v. Lucas, supra*, 12 Cal.4th at p. 449.)

B.

The Trial Court Did Not Err by Denying Sanchez's Motion for a New Trial.

In his opening appellate brief, citing Penal Code section 1181, subdivision (5), Sanchez argues the trial court should have granted his oral motion for a new trial on the ground the court "erred in the decision of any question of law arising during the course of the trial." He argues he "sought a new trial based on the court's erroneously admitting the 1984 rape under Evidence Code section 1108 because such evidence was unduly prejudicial under section 352 given that the jury had found the

rape/murder special circumstance not true. [Citation.] By finding that special circumstance not true, they essentially found there was no rape. . . . [¶] If there was never any evidence of rape, then the prior 1984 rape under section 1108 should not have been admitted. Therefore, the trial court should have reexamined its section 352 analysis and concluded that appellant should receive a new trial on only the murder charge without evidence of the 1984 rape.” We review a trial court’s ruling on a motion for new trial for abuse of discretion. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1159.)

For the reasons we discuss *ante*, the trial court did not abuse its discretion by admitting the evidence of Sanchez’s prior sexual offenses against Irene. Sanchez fails to cite any pertinent legal authority supporting his argument that a correct evidentiary ruling admitting evidence of a prior sexual offense converts to prejudicial error simply because the jury later does not find true the rape special circumstance allegation at issue in the case. As Sanchez has failed to demonstrate error in any question of law during trial, he has failed to show grounds for a new trial under Penal Code section 1181, subdivision (5).

II.

WE DO NOT NEED TO DECIDE WHETHER THE PRIOR SEXUAL OFFENSES EVIDENCE WAS ALSO ADMISSIBLE UNDER SECTION 1101, SUBDIVISION (b).

As we discussed *ante*, the evidence of Sanchez’s prior sexual offenses against Irene was properly admitted under sections 1108 and 352. We therefore do not need to address whether that evidence would have been properly admitted under section 1101, subdivision (b).²

In *Merriman*, *supra*, 60 Cal.4th at page 40, the California Supreme Court stated: “We need not resolve the parties’ debate concerning whether the evidence

² The trial court deferred ruling on the admissibility of the prior sexual offenses evidence under section 1101, subdivision (b) until after it heard all of the evidence. The court ultimately ruled that evidence was admissible under section 1101, subdivision (b) to show identity and common plan or scheme.

supporting the sexual assault crime[] was sufficiently similar to the evidence underlying the murder charge to permit admission under Evidence Code section 1101(b) to prove intent, common plan, or identity in a separate trial on the murder count. This is because the sexual assaults evidence would have been cross-admissible pursuant to Evidence Code section 1108 to show defendant's propensity to commit the rape . . . upon which both the murder charge and the special circumstance allegations were based." Similarly, citing *Merriman*, the Supreme Court in *Erskine* concluded: "In this case, Erskine was accused of a sexual offense; under section 1108, evidence of the other two crimes was therefore not inadmissible under section 1101 to show Erskine's propensity to commit the sexual offenses upon which the murder charge and the special circumstance allegations were based, so long as the evidence was not inadmissible under section 352. It is not necessary to assess the trial court's separate finding that common characteristics between the charged acts and the prior incidents were probative as to identity, deliberation or premeditation, and intent to commit the charged crimes and therefore also admissible under section 1101, subdivision (b)." (*Erskine, supra*, __ Cal.5th at p. __ [2019 Cal. Lexis 3506, at pp. *30-31].)

In his opening appellate brief, Sanchez agrees that if we find the prior sexual offenses evidence was properly admitted under section 1108, we do not need to address the admissibility of that evidence under section 1101, subdivision (b), stating: "Because the trial court allowed evidence of appellant's prior rape under both Evidence Code section 1101, subdivision (b) and 1108, this court can find error in its admission only if the testimony was inadmissible under both sections."

We therefore do not address the admissibility of that evidence under section 1101, subdivision (b) further.

III.

SUBSTANTIAL EVIDENCE SUPPORTED THE FIRST DEGREE MURDER CONVICTION.

Sanchez argues his first degree murder conviction must be reversed because insufficient evidence showed he (1) was Parnes's killer or (2) acted with premeditation and deliberation. "When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] . . . We presume in support of the judgment the existence of every fact the trier of fact reasonably could infer from the evidence. [Citation.] If the circumstances reasonably justify the trier of fact's findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.] A reviewing court neither reweighs evidence nor reevaluates a witness's credibility." (*People v. Lindberg* (2008) 45 Cal.4th 1, 27.)

A.

Substantial Evidence Showed Sanchez Was Parnes's Murderer.

Reviewing the entire record in the light most favorable to the judgment, we conclude substantial evidence supported the jury's finding Sanchez was Parnes's murderer. The evidence showed that Parnes's body was found in between trees in an orange grove near Jeffrey Road and Bryan Avenue in Irvine. Parnes sustained fatal wounds to her head; clumps of what appeared to be her hair were found five feet from her head. Semen containing only Sanchez's DNA profile was detected on a vaginal swab taken from Parnes. Although no evidence was presented showing how long sperm can be detected in a dead body, and given that Parnes may have been murdered over a week before her body was discovered, it is a reasonable inference that Sanchez was with Parnes shortly before she died.

The record also contains evidence that Sanchez had previously committed serious crimes in that orange grove. Shortly after he met Irene, he drove her to the orange grove in the same area where Parnes's body was discovered, beat her in the face, pulled her hair, and raped her twice in his car before he pulled her out of the car to be positioned in between trees. A hovering helicopter and Irene's efforts to attract attention and help interrupted whatever it was Sanchez intended to do next; given his continued beating of Irene at that point before she was able to run away to a nearby house, the jury could have reasonably inferred he intended to kill Irene and yet was unsuccessful. Sanchez pleaded guilty to raping Irene and specifically admitted he intentionally caused her great bodily harm in doing so. Thus, the prior sexual offenses evidence showed a history of violent sexual assaults in a specific location with a motive to eliminate the victim witness.

Substantial evidence therefore supported the finding Sanchez murdered Parnes.

In his appellate opening brief, Sanchez argues evidence showed "other people could have been out to kill Parnes" as she "was a prostitute, an escort and a cocaine addict" who "stole from drug dealers and drug dealers are dangerous people." Sanchez's argument fails to acknowledge the applicable substantial evidence standard of review. That other evidence exists in the record that suggests other people in Parnes's life might have had motive to kill her is irrelevant to our review. We review the record for substantial evidence that supported the jury's finding of Sanchez's guilt. For the reasons stated *ante*, substantial evidence supported the finding Sanchez murdered Parnes.

B.

Substantial Evidence Showed Sanchez Acted with Premeditation and Deliberation.

"A verdict of deliberate and premeditated first degree murder requires more than a showing of intent to kill. [Citation.] 'Deliberation' refers to careful weighing of considerations in forming a course of action; 'premeditation' means thought over in

advance. [Citations.] ‘The process of premeditation and deliberation does not require any extended period of time. “The true test is not the duration of time as much as it is the extent of the reflection. Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly.”’” (*People v. Koontz* (2002) 27 Cal.4th 1041, 1080; see *People v. Solomon* (2010) 49 Cal.4th 792, 812.)

“The very definition of ‘premeditation’ encompasses the idea that a defendant thought about or considered the act beforehand.” (*People v. Pearson* (2013) 56 Cal.4th 393, 443.) ““‘[D]eliberate’ means ‘formed or arrived at or determined upon as a result of careful thought and weighing of considerations for and against the proposed course of action.’ [Citation.]” [Citation.]” (*People v. Houston* (2012) 54 Cal.4th 1186, 1216.) The definitions boil down to this: ““An intentional killing is premeditated and deliberate if it occurred as the result of preexisting thought and reflection rather than unconsidered or rash impulse.”” (*People v. Pearson, supra*, 56 Cal.4th at p. 443.) Premeditation and deliberation may be shown by circumstantial evidence. (*People v. Anderson* (1968) 70 Cal.2d 15, 25 (*Anderson*).)

No evidence established precisely when Parnes was murdered or whether her murder occurred at the orange grove or somewhere else. Our review of the entire record, however, showed substantial evidence supported the inference Sanchez brought Parnes to the orange grove to sexually assault her and then murder her.³ The evidence showed on a prior occasion Sanchez brought Irene to the same orange grove to rape, beat, and, possibly, murder her. That Sanchez would bring his victims to a secluded location suggests planning. (See *People v. Hovarter* (2008) 44 Cal.4th 983, 1019 [“Defendant’s choice, moreover, of committing his crimes in isolated or secluded settings further suggests a premeditated plan designed to avoid detection”].) The manner of killing—

³ Although there was no evidence of sexual trauma, evidence was presented that evidence of physical trauma or injury is not always present in forcible nonconsensual sex cases.

three debilitating blows to the head with little injury to the body other than the neck and head—is also consistent with a deliberate intention to kill her.

Sanchez argues there was no evidence to support the factors identified in *Anderson, supra*, 70 Cal.2d at page 25 for reviewing findings of deliberation and premeditation. In *Anderson*, the California Supreme Court surveyed prior cases addressing the sufficiency of the evidence to support findings of deliberation and premeditation. Based on that survey, the court identified three categories of evidence relevant to deliberation and premeditation: (1) planning activity, (2) motive, and (3) manner of killing. (*Id.* at pp. 26-27.) The court stated: “Analysis of the cases will show that this court sustains verdicts of first degree murder typically when there is evidence of all three types and otherwise requires at least extremely strong evidence of [planning] or evidence of [motive] in conjunction with [evidence of] either [planning] or [manner of killing].” (*Id.* at p. 27.)

Ever since the *Anderson* decision was handed down, the California Supreme Court repeatedly has cautioned that it sets forth “guidelines” that are merely “descriptive” (*People v. Perez* (1992) 2 Cal.4th 1117, 1125; *People v. Mendoza* (2011) 52 Cal.4th 1056, 1069-1072 [court used the *Anderson* factors “as a guide”]), that the three factors or categories of evidence identified in *Anderson* are not “exhaustive” (*People v. Pride* (1992) 3 Cal.4th 195, 247), and that “*Anderson* does not require that these factors be present in some special combination” (*ibid.*). “The *Anderson* guidelines are ‘descriptive, not normative,’ and reflect the court’s attempt ‘to do no more than catalog common factors that had occurred in prior cases.’ [Citation.] In developing these guidelines, the court did not redefine the requirements for proving premeditation and deliberation.” (*People v. Young* (2005) 34 Cal.4th 1149, 1183.)

In this case, there was evidence consistent with the *Anderson* guidelines. Evidence supported the inferences Sanchez was motivated to kill Parnes after sexually assaulting her, took her to a secluded location to carry out his plan of sexually assaulting

and killing her, and did so with deliberation by repeatedly striking her in the head to ensure her death. The crucial point here is not whether there is evidence to fill each of the *Anderson* guidelines, but that there was sufficient evidence to support a finding Sanchez's actions were the "result of preexisting thought and reflection rather than unconsidered or rash impulse." (*People v. Pearson, supra*, 56 Cal.4th at p. 443.) We conclude there was such sufficient evidence.

IV.

WE REMAND FOR RESENTENCING UNDER SENATE BILL 1393.

In a supplemental opening brief, Sanchez argues that this case must be remanded to the trial court "to allow it to exercise its new discretion under Senate Bill 1393 to strike the serious felony enhancement imposed under Penal Code section[] 667, subdivision (a)."

"On September 30, 2018, the Governor signed Senate Bill 1393 which, effective January 1, 2019, amends sections 667[, subdivision] (a) and 1385[, subdivision] (b) to allow a court to exercise its discretion to strike or dismiss a prior serious felony conviction for sentencing purposes." (*People v. Garcia* (2018) 28 Cal.App.5th 961, 971.) Under the prior versions of these statutes, which were in effect at the time Sanchez was originally sentenced, the court was *required* to impose a five-year consecutive term for "any person convicted of a serious felony who previously has been convicted of a serious felony" (former § 667[, subd.] (a)), and the court ha[d] no discretion 'to strike any prior conviction of a serious felony for purposes of enhancement of a sentence under Section 667' (former § 1385[, subd.] (b))." (*Ibid.*)

The appellate court in *People v. Garcia* concluded "it is appropriate to infer, as a matter of statutory construction, that the Legislature intended Senate Bill 1393 to apply to all cases to which it could constitutionally be applied, that is, to all cases not yet final when Senate Bill 1393 becomes effective on January 1, 2019. [Citations.]" (*People v. Garcia, supra*, 28 Cal.App.5th at p. 973, citing *People v. Superior Court*

(*Lara*) (2018) 4 Cal.5th 299, 307-308 & fn. 5 & *In re Estrada* (1965) 63 Cal.2d 740, 744-745; see *People v. Rocha* (2019) 32 Cal.App.5th 352, 360; *People v. Jones* (2019) 32 Cal.App.5th 267, 272 [“When it enacted Senate Bill 1393, the Legislature did not indicate it intended the legislation to apply prospectively only. [Citations.] The act thus applies retroactively to this case”]; *People v. Pride* (2019) 31 Cal.App.5th 133, 142.)

Although the Attorney General concedes the new law applies to Sanchez retroactively, he asserts that remand is unwarranted because the trial court indicated it would not have dismissed the prior conviction enhancements even if it had the discretion to do so. The Attorney General cites to the transcript of the sentencing hearing at which counsel and the trial court discussed whether the court had discretion as to the imposition of the prior serious felony enhancement terms given that the law had changed over the years since the murder occurred in 1992. The court stated: “As we previously have spoken of, the court does not believe that it has discretion . . . based on 1385(b), but if the court did have discretion, the court would decline to exercise that discretion in this case. [¶] The court is basing that and this sentence in part on statements of the Legislature and the court regarding sentencing. [¶] California Rules of Court 410 states that the general objective of sentencing includes protecting society, punishment of the defendant, encouraging the defendant to lead a law-abiding life in the future and deterring him or others from future offenses, preventing the defendant from committing any crimes by isolating him for a period of incarceration. [¶] And rule 4.42(1)(b), the defendant has engaged in violent conduct which indicates a serious danger to society. The defendant’s prior convictions as an adult are numerous and of increasing seriousness. And the defendant’s prior performance on probation/parole was unsatisfactory.” The court thereafter imposed a five-year term for each of Sanchez’s prior serious felony convictions.

Although the trial court stated at the 2017 sentencing hearing it would not have declined to impose the prior serious felony enhancement terms if it had the

discretion to do so, the trial court stated it was basing its comments, at least in part, “on statements of the Legislature and the court regarding sentencing.” The trial court should have the opportunity to exercise its discretion whether to impose the prior serious felony enhancement terms in light of the changes in the law and legislative policy since the 2017 sentencing hearing. We do not express any opinion on how the court’s discretion should be exercised.

DISPOSITION

The judgment is affirmed and the matter is remanded for resentencing with directions to the trial court to decide whether to exercise its discretion to strike the prior serious felony conviction enhancements under Penal Code section 667, subdivision (a)(1). The trial court shall thereafter forward a certified copy of any amended abstract of judgment to the Department of Corrections and Rehabilitation.

FYBEL, J.

WE CONCUR:

O’LEARY, P. J.

ARONSON, J.